

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 10, 2007

D050413 People v. Estrada

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D048274 Gravalec v. Conrad

The order is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D049984 Walsh v. McBride

The petition for rehearing is denied.

D051160 In re Hayes on Habeas Corpus

The petition is denied.

D048845 People v. Upsher

D050640 In re Upsher on Habeas Corpus

The pending petition for writ of habeas corpus, In re Steven Legust Upsher, D050640, is consolidated with the pending appeal, People v. Upsher D048845, for purposes of the disposition.

D048845 People v. Upsher

D050640 In re Upsher on Habeas Corpus

The judgment is reversed as to Upsher's count 2 conviction for dissuading a witness under Penal Code section 136.1, subdivision(b). In all other respects, the judgment is affirmed. The petition for writ of habeas corpus is denied. O'Rourke, J.; We Concur: McDonald, Acting P.J., Irion, J.

D050400 People v. Payne

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Huffman, J.

D046906 K-2 Construction, Inc. v. Anjani Investments et al.

D046953 K-2 Construction, Inc. v. Anjani Investments et al.

It is ordered that the opinion filed on August 9, 2007, is modified. The petition for rehearing is denied. The request for publication is denied. [Change in judgment]

D048895 People v. Aldana

The trial court used an incorrect standard to determine whether Aldana was factually innocent. Moreover, Aldana failed to carry her burden of showing she was factually innocent of the crimes for which she was arrested. The evidence introduced at the hearing included objective facts from which a reasonable person could suspect she was guilty of the crimes for which she was arrested. We therefore reverse the decision of the trial court. Benke, J.; We Concur: McConnell, P.J., McIntyre, J.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 10, 2007 (Continued)

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk: D. Moore

D050058 Marriage of Josephson

Cause called on merits. Jennifer Hegemier, Esq. argued for appellant. Suzanne M. Quirk, Esq. argued for respondent. Ms. Hegemier replied. Cause submitted.

D050447 Wood v. Emmerson et al.

Cause called on merits. Dennis George Popka, Esq. argued for appellant. David A. Kay, Esq. argued for respondent. Mr. Popka replied. Cause submitted.

Court recessed at 9:51 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D048975 People v. Armitage

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Sabrina Lane-Erwin, Deputy Attorney General argued for respondent. Cause submitted.

D048346 Quang v. Tran

Cause called on merits. Mary A. Lehman, Esq. argued for appellant. George de la Flor, Esq. argued for respondent. Ms. Lehman replied. Cause submitted.

Court recessed at 1:51 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D049315 Cornell v. Robinson Ford Sales, Inc.

Cause called on merits. Hal Rosner, Esq. argued for appellant. Catherine A. Gayer, Esq. argued for respondent. Mr. Rosner replied. Cause submitted.

Court recessed at 2:20 p.m. until Tuesday, September 11, 2007 at 9:00 a.m.

D050587 In re Alexis J. et al., a Juvenile

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 11, 2007

D048678 People v. Bass

The judgment is affirmed in part and reversed in part, and the case is remanded for sentencing proceedings consistent with this opinion. Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D051544 In re Jayde A., a Juvenile

This matter has been reviewed by Associate Justices Huffman, Haller and O'Rourke. The notice of appeal received on August 30, 2007 is untimely. The appeal is dismissed. A copy of the notice of appeal and the order will be mailed by the court to Scott A.'s trial attorney.

D049767 Graham v. San Diego County Civil Service Commission

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D050895 Collingwood v. Quinn

Upon written request filed by the appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D051075 In re David D., a Juvenile

The appeal is dismissed. McConnell, P.J.; We Concur: Huffman, J., Nares, J.

D050636 In re Dakota H.

The appeal is dismissed. Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.

D051551 In re O'Shell on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

D049387 TG Oceanside LP v. City of Oceanside et al.

Cause called on merits. Rochelle Browne, Esq. argued for appellant/cross-respondent. Mark D. Alpert, Esq. argued for respondent/cross-appellant. Ms. Browne replied. Cause submitted.

Court recessed at 10:24 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 11, 2007 (Continued)

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D048375 Brandes v. Brandes

Cause called on merits. Stephen Temko, Esq. argued for appellant. Michael Brouman, Esq. was present in oral argument for respondent, but did not argue. Richard Isaac Sherman, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

Court recessed at 2:08 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D049525 In re Jose C., a Juvenile

Cause called on merits. Kurt David Hermansen, Esq. argued for appellant. Steve Oetting, Deputy Attorney General argued for respondent. Mr. Hermansen replied. Cause submitted.

D048991 Paulson et al. v. Fire Prevention Services, Inc.

Cause called on merits. Roger C. Christianson, Esq. argued for appellant. Robert W. Jackson, Esq. argued for respondent. Mr. Christianson replied. Cause submitted.

Court recessed at 2:52 a.m. until Wednesday, September 12, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 12, 2007

D050271 People v. Archuleta

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately.

D050425 People v. Fanelli

The sentence is vacated and the case is remanded for the trial court to conduct a new sentencing hearing. In all other respects, the judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McDonald, J.

D049785 People v. Hardy

The judgment is affirmed. Haller, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D050385 People v. Quitquit

The judgment is reversed. McIntyre, J.; I Concur: O'Rourke, J.; I Concur (by opinion): Haller, Acting P.J.

D050045 Ott v. Donsbach et al.

Appellant filed a request to dismiss the appeal on August 30, 2007. Respondent filed a letter withdrawing his motion for sanctions for frivolous appeal on September 11, 2007. The motion for sanctions is WITHDRAWN. The appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D048914 People v. Trujillo

The Penal Code section 1202.4(b)(1) felony restitution fine is reversed. In all other respects the judgment is affirmed. The matter is remanded with instructions that the court exercise its discretion under Penal Code section 1202.4(b)(1) in setting the amount of the restitution fine to be imposed under that section. Nares, J.; We Concur: Benke, Acting P.J., Huffman, J.

D050710 People v. Rivas

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.360(c)(5)(A). The appeal is DISMISSED.

D048438 Talley v. Miller & Schroeder et al.

The judgments of dismissal are affirmed in part and reversed in part, with directions to conduct appropriate further proceedings in accordance with the views expressed in this opinion. Valuation and U.S. Trust are to pay plaintiff's costs on appeal; all other parties are to bear their own costs. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D048582 Patel v. Liebermensch et al.

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 12, 2007 (Continued)

D049351 Collingwood v. Quinn

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D051310 Monica A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely second amended petition for writ relief has been filed in response to this court's August 22, 2007 order. The notice of intent is deemed abandoned and the order to show cause is discharged as improvidently granted. The case is DISMISSED.

D051353 Jasmine P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

D046197 People v. Jesperson

The judgment is reversed. Huffman, J.; I Concur: McIntyre, J.; Dissenting (Opinion): Benke, Acting P.J.

Court reconvened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Cynthia Aaron

Clerk: D. Moore

D048831 McWethy v. Elansari

Cause called on merits. Rodney Lee Donohoo, Esq. argued for appellant. Glen Russell Roberts, Esq. argued for respondent. Cause submitted.

D049252 Prentice v. Board of Administration California Public Employees' Retirement System

Cause called on merits. Michael A. Conger, Esq. argued for appellant. Wesley E. Kennedy, Esq. argued for respondent. Mr. Conger replied. Cause submitted.

Court recessed at 9:58 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D049898 In re Angel M., a Juvenile

Cause called on merits. Christian C. Buckley, Esq. argued for appellant, Hanan M. Gary Seiser, Deputy County Counsel argued for respondent. Joseph Tavano, Esq. argued for respondent, Kenton C. Suzanne Evans, Esq. argued for the minor. Mr. Buckley replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
September 12, 2007 (Continued)

Court recessed at 10:57 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D050034 People v. Shields

Cause called on merits. Gary R. Nichols, Deputy Public Defender, argued for appellant. Bradley Weinreb, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 11:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D047958 Petta v. Petta

Cause called on merits. Eugene R. Salmonsens, Esq. argued for appellant. John E. Patterson, Esq. argued for respondent. Mr. Salmonsens replied. Cause submitted.

D048865 Loucks et al. v. Jacobs

Cause called on merits. Marc O. Stern, Esq. argued for appellant. Richard J. Ritchie, Esq. argued for respondent. Mr. Stern replied. Cause submitted.

**D048585 Sanders, Inc. Architecture/Engineering v. Board of Trustees of California
State University**

Cause called on merits. Kerri M. Melucci, Esq. argued for appellant. Ward Lott, Esq. argued for respondent. Cause submitted.

Court recessed at 2:07 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 12, 2007 (Continued)

D047757 SDG&E v. City of San Diego et al.

D048866 SDG&E v. City of San Diego et al.

Cause called on merits. David Alan Battaglia, Esq. argued for appellant. Frederick M. Ortlieb, Esq. argued for respondent, City. Donald R. Lincoln, Esq. argued for respondent, Padres. Mr. Battaglia replied. Cause submitted.

Court recessed at 2:48 p.m. until Thursday, September 13, 2007 at 1:30 p.m.

D051494 Alexander v. San Diego Unified School District et al.

On August 24, 2007, the court advised Cherie Alexander that she was required to complete and return the Application for Permission to Appeal or to file a writ Petition by September 4, 2007. No application has been received by the court. The August 24, 2007, order staying the appeal is VACATED. The appeal is DISMISSED. (Code Civ. Proc., § 391.7, subd. (c).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D050575 In re Mackenzie W., a Juvenile

The order is affirmed. McDonald, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D051596 People v. Ford

The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is DISMISSED without prejudice to refileing a notice of appeal after an appealable order or judgment is entered.

D047997 People v. Greenwood

Judgment affirmed. Haller, J.; We Concur: McConnell, P.J., Benke, J.

D049401 People v. Kuechmann

The judgment is modified to strike that portion ordering that Kuechmann pay restitution to the Police Department in the amount of \$800. The judgment is otherwise affirmed. Aaron, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D049281 People v. Williams

The judgment is affirmed as modified to reflect the court's clarification of the computer use restrictions. McConnell, P.J.; We Concur: Huffman, J., Nares, J.

D048991 Paulson et al. v. Fire Prevention Services, Inc.

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D047442 Pacific Star Ventures LLC et al. v. Tan et al.

The appeal is dismissed insofar as it concerns specific performance. The judgment is affirmed insofar as it concerns attorney fees. The plaintiffs are entitled to costs on appeal. McConnell, P.J.; I Concur: O'Rourke, J.; I Concur in the Result: Huffman, J.

D049917 In re Seth R., a Juvenile

The order is affirmed. Aaron, J.; We Concur: McConnell, P.J., O'Rourke, J.

D051173 In re Daniels on Habeas Corpus

The petition is denied.

Court convened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 13, 2007 (Continued)

D049331 Brinker Restaurant Corporation v. Superior Court/Hornbaum et al.

Matter called on merits. Rex S. Heinke, Esq. argued for petitioner. Karen J. Kubin, Esq. was present in oral argument for petitioner, but did not argue. Kimberley A. Kralowec, Esq. argued for real parties in interest. L. Tracee Lorens, Esq. was present in oral argument for real parties in interest, but did not argue. Miles A. Locker, Esq. argued for Alameda County Central Labor Council, and the various amicus curiae's. Mr. Heinke replied. Matter submitted.

Court recessed at 2:58 p.m. until Friday, September 14, 2007 at 9:00 a.m.

D050754 People v. Jordan

Appellant has failed to file a brief after notice was given under California Rules of Court, rule 8.360(c)(5)(A). The appeal is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 14, 2007

D050262 In re N.G., a Juvenile

The order is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McDonald, J.

D049864 People v. Calvert

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller
Clerk: D. Moore

D047095 People v. Cole et al.

Cause called on merits. Arthur Martin, Esq. argued for appellant, Cole. Patricia Ann Scott, Esq. argued for appellant, Robles. Annie Fraser, Deputy Attorney General argued for respondent. Mr. Martin replied. Cause submitted.

Court recessed at 9:34 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D047358 Fraser, III et al. v. Rudick

Cause called on merits. Jon R. Williams, Esq. argued for appellant. John A. Simpson, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

Court adjourned at 9:51 a.m.

D049786 People v. Zanghi II

The judgment is modified to reflect dismissal of the prior prison term enhancement. As so modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment and forward the amended abstract to the Department of Corrections and Rehabilitation. McDonald, J. ; We Concur: Benke, Acting P.J., Haller, J.

D050058 In re the Marriage of Josephson

The order is affirmed. The stay issued by this court on January 25, 2007, is vacated. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

D051156 In re Hoch on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 14, 2007 (Continued)

D051167 In re Turner on Habeas Corpus

The petition is denied.

D051628 People v. Bishop on Habeas Corpus

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

D051630 In re Amber M. on Habeas Corpus

The September 13, 2007, order remanding the minor to custody is stayed pending further order of this court and the minor shall be released forthwith to her mother. The People are requested to file a response to the petition on or before September 20, 2007.